

**ORIGINAL**

USDC SDNY  
DOCUMENT  
ELECTRONICALLY FILED  
DOC #: 2  
DATE FILED: 7/14/04

RAKOFF, S.

DAVID N. KELLEY  
United States Attorney  
Southern District of New York  
By: SARAH E. LIGHT (SL-9869)  
Assistant United States Attorney  
86 Chambers Street, 3rd Floor  
New York, New York 10007  
Tel. No.: (212) 637-2774

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Plaintiff,

- against -

NEW PUCK, LP,

Defendant.

*ECP*  
**CONSENT DECREE**

04 Civ. *5449 (SSA)*

WHEREAS, Plaintiff United States of America (the

"Government") commenced this action to enforce provisions of the Americans with Disabilities Act of 1990 ("ADA") against defendant New Puck, LP ("New Puck" or "defendant"), pursuant to 42 U.S.C. § 12188(b)(1)(B), with respect to the Puck Building, a building located at 295 Lafayette Street, New York, New York (the "Puck Building"); and

WHEREAS, the complaint alleges that defendant violated Title III of the ADA, 42 U.S.C. §§ 12181-89, and the Department of Justice's implementing regulation, 28 C.F.R. Pt. 36 (the "Regulation"), by, among other things, failing to remove architectural barriers to access where it is readily achievable

MICROFILM  
JUL 16 2004  
-9:00AM

to do so; failing to use readily achievable alternatives to barrier removal where barrier removal is not readily achievable; and by failing to reasonably modify policies, practices and procedures to make the goods and services offered at the Puck Building accessible to individuals with disabilities; and

WHEREAS, the commencement of this action by the United States follows an investigation by the United States Department of Justice into a complaint filed by an individual (the "Complainant") who alleged that New Puck violated the ADA by failing to remove barriers to access to and within the public function rooms of the Puck Building; and

WHEREAS, as a result of a separate, unrelated claim, the Complainant received a sum of money from New Puck in settlement of his claim for compensation for any injuries he sustained in connection with his visit to the Puck Building; and

WHEREAS, the defendant denies liability for any violation of Title III of the ADA with respect to the Puck Building, and has consented to the entry of this Consent Decree without trial or adjudication of any issues of fact or law and without this Consent Decree constituting an admission by defendant with respect to any such issue of fact or law; and

WHEREAS, the United States and defendant agree that settlement of these matters without further litigation is in the public interest and that the entry of this Consent Decree is the

most appropriate means of resolving these matters;

NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED as follows:

**JURISDICTION AND VENUE**

1. This Court has jurisdiction over this action pursuant to 42 U.S.C. §§ 12188(b)(1)(B) and 42 U.S.C. §§ 1331 and 1345.

**APPLICATION AND PARTIES BOUND**

2. This agreement shall be binding on New Puck, its agents and employees. In the event New Puck seeks to transfer or assign all or part of its interest in any facility covered by this agreement, and the successor or assign intends on carrying on the same or similar use of the facility, as a condition of sale defendant shall obtain the written accession of the successor or assign to any obligations remaining under this agreement for the remaining term of this agreement.

3. The Puck Building is a place of public accommodation within the meaning of 42 U.S.C. § 12181(7) because its operations affect commerce and because, among other things, the Puck Building contains "an auditorium, convention center, lecture hall, or other place of public gathering," 42 U.S.C. § 12181(7)(D) and "a restaurant, bar, or other establishment serving food or drink," 42 U.S.C. § 12181(7)(B). Defendant New Puck is a public accommodation within the meaning of Title III

because it owns the places of public accommodation within the Puck Building. 42 U.S.C. § 12181(7); 12182; 28 C.F.R. § 36.104.

**FACILITIES COVERED BY THIS CONSENT DECREE**

4. This Consent Decree shall apply to each and every space located on the first and seventh floors of the Puck Building, including but not limited to, the rooms and establishments presently or formerly known as the Grand Ballroom, the Skylight Ballroom and the Lafayette Ballroom. This Consent Decree shall also apply to the public restrooms located on the first and seventh floors, including the men's restroom located on the first floor, the women's restroom located on the first floor, the men's restroom located on the seventh floor and the women's restroom located on the seventh floor. This Consent Decree shall also apply to the entrances, elevators, public telephones and drinking fountains, alarm systems, lobbies, and routes serving the rooms and establishments located on the first and seventh floors.

5. This Consent Decree shall not absolve defendant New Puck or any other person or entity from liability for any violation or potential violation of the ADA concerning any space or feature within the Puck Building not expressly included within the coverage of this Consent Decree. Nothing in this Consent Decree shall preclude the United States from commencing or continuing any investigation with respect to any facility or

establishment not expressly included within the coverage of this Consent Decree, and nothing in this Consent Decree shall preclude the United States from commencing a civil action against any person or entity with respect to any facility or establishment of the Puck Building not expressly included in this Consent Decree's coverage.

### **CONSENT DECREE RELIEF**

#### **A. ARCHITECTURAL MODIFICATIONS AND ACCOMMODATIONS**

6. Defendant shall remedy the barriers to access identified in this Consent Decree in the manner set forth below within six months after the date of entry of this Consent Decree, with the exception of the modification of the entrance as set forth in paragraph 7 of this Consent Decree, which shall be completed within twelve months after the date of entry of this Consent Decree. In addition, any renovations or alterations to the Puck Building commenced on or after the date of entry of this Consent Decree, including without limitation the addition of any new function room, restroom, drinking fountain, or public telephone, shall be made in accordance with the ADA Accessibility Guidelines for Buildings and Facilities, 28 C.F.R. Pt. 36, App. A (the "Standards").

#### **FRONT ENTRANCE**

##### **7. Accessible Entrance**

(a) Defendant shall construct an alternate and

accessible public entrance to the Puck Building on Lafayette Street. As used in this paragraph and throughout this Consent Decree, the term "accessible" describes a site, building, feature or facility, or a portion thereof, that complies with the Standards. The new alternate and accessible entrance required by this paragraph shall comply in all respects with sections 4.1.2(7)(c), 4.1.7(3)(b), 4.3, 4.13 and 4.14 of the Standards. Defendant shall construct an access lift on Lafayette Street. This lift shall comply with section 4.11.2 of the Standards. This lift shall be universally accessible, and shall have an intercom system at the street level to notify the 24-hour door attendants on duty when an individual is using the lift or requires assistance. The lift shall be equipped with a fold-down seat and an emergency buzzer to the door attendant on duty at the front desk. In addition, New Puck shall enter into a maintenance contract that provides for lift maintenance - including emergency maintenance - within two (2) hours of the problem during business hours and within four (4) hours of the problem during non-business hours.

(b) Defendant shall post directional signage complying with sections 4.30.2, 4.30.3 and 4.30.5 of the Standards indicating the location of the alternate and accessible public entrance.

(c) No part of this alternate and accessible public

entrance to the Puck Building shall proceed through a kitchen, pantry, or other service area, and defendant shall not require individuals with disabilities to enter or exit the Puck Building by way of a kitchen, pantry or other service area.

(d) Use of the alternate and accessible public entrance to the Puck Building shall be available to all members of the general public.

(e) Once an accessible entrance is provided on Lafayette Street, neither the Rear Service entrance on Mulberry Street nor the Freight Elevator adjacent to the Rear Service entrance will serve as an accessible entrance, except in the case of emergency or inoperability of the lift.

(f) Defendant shall construct this accessible entrance within twelve months of the entry of this Consent Decree.

**PUBLIC AREAS AND FUNCTION ROOMS - FIRST FLOOR**

**APPROACH TO THE GRAND BALLROOM FROM THE NORTH LOBBY**

8. Defendant shall:

(a) replace door hardware on the Grand Ballroom entrance from the North Lobby near the new elevators to comply with 4.13.9 of the Standards.

(b) remove the fabric curtain to allow an accessible route into the Grand Ballroom from the North Lobby and shall designate this entrance as a second general-access entrance to the Grand Ballroom.

(c) provide signage complying with 4.1.3(16)(b) and 4.1.6(1)(h) to indicate the accessible route into the Grand Ballroom.

#### GRAND BALLROOM

9. Defendant shall either:

(a) relocate the fire extinguisher cabinets near the Bar in the southwest corner of the Grand Ballroom to be away from the circulation path;

(b) recess the fire extinguisher cabinets so as not to protrude more than 4 inches into the circulation path;

(c) lower the fire extinguisher cabinets so that the bottom is no higher than 27 inches above the floor; or

(d) install an object that acts as a cane-detection device below the fire extinguisher cabinets with its bottom no higher than 27 inches above the floor in compliance with 4.4.1 of the Standards.

10. Defendant shall provide visual alarm strobes in the Grand Ballroom complying with 4.1.3(14) and 4.28.3 of the Standards, and/or the 1998 ANSI A117.1 and/or applicable NFPA guidelines for visual alarm strobes.

#### ROUTE BETWEEN THE GRAND BALLROOM AND THE LAFAYETTE BALLROOM

11. Defendant shall replace the wood thresholds on the route between the Grand Ballroom and the Lafayette Ballroom with thresholds whose slope does not exceed 1:2, in compliance with



4.13.8 of the Standards.

12. Defendant shall replace the door hardware on the two doors leading to the corridor connecting the Grand Ballroom and the Lafayette Ballroom with accessible hardware complying with 4.13.9 of the Standards.

APPROACH TO THE LAFAYETTE BALLROOM FROM THE NORTH LOBBY

13. Defendant shall replace the wood thresholds in the entrance approach from the North Lobby to the Lafayette Ballroom with thresholds whose slope does not exceed 1:2, in compliance with 4.13.8 of the Standards.

14. Defendant shall replace the door hardware on the entrance from the North Lobby with accessible hardware complying with 4.13.9 of the Standards.

APPROACH TO THE LAFAYETTE BALLROOM FROM THE SOUTH LOBBY

15. Defendant shall modify the carpeted ramp leading into the Lafayette Ballroom from the South Lobby to provide a level change not exceeding 1/4 inch vertical rise in compliance with 4.5.2 of the Standards.

LAFAYETTE BALLROOM

16. Defendant shall install an additional visual alarm strobe appliance in the Lafayette Ballroom complying with 4.1.3(14) and 4.28.3 of the Standards, and/or the 1998 ANSI A117.1 and/or applicable NFPA guidelines for visual alarm strobes.

APPROACH TO THE GALLERY FROM THE SOUTH LOBBY

17. Defendant shall modify or replace the existing carpeted ramp leading into the Gallery from the South Lobby to (a) provide maneuvering clearance on the push side of the entry door in accordance with section 4.13.6 and Figure 25 of the Standards, and (b) ensure a slope not exceeding 1:2 in accordance with 4.8.2 of the Standards.

GALLERY

18. Defendant shall install an additional visual alarm strobe in the Gallery complying with 4.1.3(14) and 4.28.3 of the Standards, and/or the 1998 ANSI A117.1 and/or applicable NFPA guidelines for visual alarm strobes.

MEN'S PUBLIC RESTROOM - FIRST FLOOR NEAR GALLERY

19. Defendant shall:

(a) provide offset hinges for the entry door in compliance with 4.13.5 of the Standards.

(b) lower or otherwise modify the lavatory counter so that the counter for at least one of the lavatory bowls is no higher than 34 inches in compliance with 4.19.2 of the Standards. Defendant shall insulate or otherwise protect the pipes below the counter in compliance with 4.19.4 of the Standards.

(c) modify the urinal so that it is no higher than 17 inches and the flush control is no higher than 44 inches in compliance with 4.18.2 and 4.18.4 of the Standards.

(d) replace the side grab bar with a 42 inch grab bar, mounted as shown in Figure 30(d) and in compliance with 4.26 of the Standards.

(e) install a visual alarm strobe appliance complying with 4.1.3(14) and 4.28.3 of the Standards, and/or the 1998 ANSI A117.1 and/or applicable NFPA guidelines for visual alarm strobes.

(f) install signage complying with 4.1.3(16)(a) and 4.30 of the Standards.

(g) replace door hardware with hardware that complies with 4.13.9 of the Standards.

WOMEN'S PUBLIC RESTROOMS NEAR GALLERY - FIRST FLOOR

20. Defendant shall:

(a) provide offset hinges for the entry door in compliance with 4.13.5 of the Standards.

(b) modify the lavatory apron so that the counter for at least one lavatory bowl will have knee clearance of no less than 27 inches minimum height by 30 inches minimum width in compliance with 4.19.2 of the Standards. Defendant shall insulate or otherwise protect the pipes below the counter in compliance with 4.19.4 of the Standards.

(c) modify the flush valve on the accessible toilet to point to the wide side of the compartment or shall replace the flush valve with an automatic flush device in compliance with

4.16.5 of the Standards.

(d) replace the side grab bar with a 42-inch grab bar, mounted as shown in Figure 30(d) and in compliance with 4.26 of the Standards.

(e) install a visual alarm strobe appliance complying with 4.1.3(14) and 4.28.3 of the Standards, and/or the 1998 ANSI A117.1 and/or applicable NFPA guidelines for visual alarm strobes.

(f) install signage complying with 4.1.3(16)(a) and 4.30 of the Standards.

(g) relocate the toilet paper dispenser to comply with Figure 30(d) of the Standards.

(h) replace door hardware with hardware that complies with 4.13.9 of the Standards.

#### **PUBLIC ELEVATORS**

##### **PUBLIC ELEVATORS IN THE NORTH LOBBY**

21. Defendant shall:

(a) modify the emergency communication system to have a non-audible component in accordance with 4.10.14 of the Standards.

(b) modify the door to the emergency communication system so that operating hardware does not require tight grasping, pinching or twisting of the wrist in accordance with 4.27.4 of the Standards.

PUBLIC ELEVATORS IN THE SOUTH LOBBY

22. Defendant shall:

(a) modify the emergency communication system to have a non-audible component in accordance with 4.10.14 of the Standards.

(b) modify the door to the emergency communication system so that operating hardware does not require tight grasping, pinching or twisting of the wrist in accordance with 4.27.4 of the Standards.

(c) lower the elevator control buttons and emergency telephone to comply with 4.10.12(3) and 4.10.14 of the Standards.

(d) equip the elevator with tones for visually impaired persons as required by 4.10.13 of the Standards.

SEVENTH FLOOR PUBLIC AREAS AND FUNCTION ROOMS

APPROACH TO SKYLIGHT BALLROOM FROM SOUTH ELEVATOR LOBBY

23. Defendant shall:

(a) install an object that acts as a cane-detection device below the sprinkler valve in the hall near the South Elevator Lobby with its bottom no higher than 27 inches above the floor in compliance with 4.4.1 of the Standards.

(b) replace the inaccessible threshold at the corner where the corridor from the South Elevator Lobby meets the corridor with the Special Events Office with a threshold with a slope not exceeding 1:2, in compliance with 4.13.8 of the

Standards.

(c) install signage identifying permanent rooms and spaces in compliance with 4.1.3(16)(a) and 4.30.4-4.30.6 of the Standards.

(d) replace the door hardware to the Bridal Room and Special Events Room with hardware that complies with 4.13.9 of the Standards.

(e) replace the two inaccessible thresholds at the sliding door to the Skylight Ballroom from the hall on the Lafayette Street side with thresholds with a slope not exceeding 1:2, in compliance with 4.13.8 of the Standards.

(f) replace the inaccessible threshold at the corner of the approach corridor from the elevators and the hall with the public restrooms with a threshold with a slope not exceeding 1:2, in compliance with 4.13.8 of the Standards.

#### SKYLIGHT BALLROOM

24. Defendant shall:

(a) either (i) install an object acting as a cane-detection device below the electrical control/dimmer box near the Skylight Ballroom entrance with the sliding door, or (ii) lower the box so that the bottom edge is below 27 inches, in compliance with 4.4.1 of the Standards.

(b) install at least two additional visual alarm strobes complying with 4.1.3(14) and 4.28.3 of the Standards,

and/or the 1998 ANSI A117.1 and/or applicable NFPA guidelines for visual alarm strobes.

(c) modify the thresholds at the openings in the glass wall between the Skylight Ballroom and the adjacent anteroom to comply with 4.13.8 of the Standards.

#### **PUBLIC RESTROOMS - SEVENTH FLOOR**

##### **MEN'S RESTROOM AND WOMEN'S RESTROOM**

25. Defendant shall install a unisex accessible restroom on the Seventh Floor on an accessible route and in close proximity to the Skylight Ballroom.

(a) The unisex restroom shall comply with sections 4.17.3 and 4.22 and Figures 28, 29, 30(a), 31, and 32 of the Standards, and the door shall have a privacy latch. If the unisex restroom contains a toilet stall, that stall shall be a Standard Stall that meets the specifications of Figure 30(a) of the Standards.

(b) Defendant shall post directional signage complying with sections 4.30.2, 4.30.3 and 4.30.5 of the Standards indicating the location of the unisex restroom. Such signage shall be posted at both the Men's and Women's Restrooms on the seventh floor.

#### **B. SERVICES, BENEFITS, ADVANTAGES, AND PRIVILEGES**

26. Defendant shall not discriminate against individuals on the basis of disability in the full and equal

enjoyment of the goods and services of the Puck Building.

27. Defendant shall provide individuals with disabilities an equal opportunity to benefit from the goods, services, advantages, and privileges of the Puck Building as is provided to individuals without disabilities.

28. Within six months after the date of entry of this Consent Decree, defendant shall develop a written policy or policies for providing goods and services to individuals with disabilities at the Puck Building in accordance with the requirements of Title III of the ADA. Such policy shall address, among other things, the use of the accessible entrance lift and door attendant assistance for the lift; the reservation of function rooms; the location and distribution of accessible tables; the location of reception stations and host stations within function rooms and bar areas; and the circulation path of patrons. Defendant shall submit its written policy or policies (and any changes to such policy or policies) to the United States, through undersigned counsel, for review and approval. Upon approval by the United States, defendant shall implement the policy and shall make that policy known to all of its employees and patrons.

#### **CIVIL PENALTIES**

29. Defendant New Puck shall pay twelve thousand five hundred dollars (\$12,500.00) in full and final settlement and



satisfaction of any and all claims asserted by the United States in this action for civil penalties, with payment to be made within thirty (30) days after the date of entry of this Consent Decree by check payable to the United States Department of Justice. Such check shall be delivered to the following address:

United States Attorney's Office  
Southern District of New York  
86 Chambers Street, 3rd Floor  
New York, NY 10007  
Attention: AUSA Sarah E. Light

30. Defendant denies having violated Title III of the ADA with respect to the Puck Building, and asserts that it has agreed to pay the amounts specified in the previous paragraph solely to resolve this matter without costly and protracted litigation.

#### **CERTIFICATION**

31. Within six months after the date of entry of this Consent Decree, defendant shall submit to the Government a certification, under penalty of perjury, stating that it has complied with all obligations of this Consent Decree that are required to be satisfied or completed by that date. Within twelve months after the date of entry of this Consent Decree, New Puck shall submit to the Government a certification, under penalty of perjury, stating that the accessible entrance required to be installed by paragraph 7 of this Consent Decree has been

installed.

#### **RIGHT TO REVIEW COMPLIANCE**

32. The United States may review compliance with this Consent Decree at any time. Upon reasonable advance notice to defendant (through undersigned counsel), defendant shall permit the United States and any person acting on its behalf unlimited access to the Puck Building to review compliance with the ADA and this Consent Decree. If the United States believes that defendant has violated this Consent Decree or is otherwise not in full compliance with the ADA, the United States will notify defendant in writing and seek to resolve the matter amicably before applying to the Court for relief. Failure by the United States to enforce any provision or deadline of this decree shall not be construed as a waiver of its right to enforce other provisions or deadlines of this decree.

#### **VIOLATION OF THIS CONSENT DECREE**

33. A violation of this Consent Decree shall be deemed a subsequent violation of the ADA under 42 U.S.C. § 12188(b)(2)(c); 28 C.F.R. § 36.404(a)(3).

#### **FORCE MAJEURE**

34. In the event New Puck is delayed in meeting any deadline for making architectural modifications pursuant to this Consent Decree due to any acts of God, force majeure, strike, lock out, or any other condition beyond the control of New Puck,

the time for meeting such deadline or complying with such obligation shall be extended for such reasonable time until after the conditions end or substitute arrangements can be made, provided that New Puck provides written notice to the Government within ten (10) days of its notice of the specified condition. Upon such notice, the Government and New Puck will negotiate in good faith to reach an agreement as to an appropriate extension.

#### **RESERVATION OF RIGHTS**

35. Nothing contained in this Consent Decree is intended or shall be construed as a waiver by the Government of any right to institute any proceeding or action against defendant for violations of any statutes, rules or regulations administered by the Government, or to prevent or limit the rights of the Government to obtain relief under the ADA, or any other federal statutes or regulations, or on account of any violation of this Consent Decree or any other provision of law. However, subject to defendant's full compliance with the Consent Decree, the Government will not file a subsequent complaint against defendant pursuant to Section 12182(b)(2)(A)(iv) or (v) of the ADA concerning the facilities and establishments of the Puck Building expressly included within the terms of this Consent Decree based on the facts in existence at the time of the filing of the complaint herein, unless defendant makes alterations that do not comply with Title III of the ADA.

#### **MODIFICATION**

36. There shall be no modification of this Consent Decree without the written consent of the Government, defendant, and the approval of the Court.

#### **ENTIRE AGREEMENT**

37. This Consent Decree represents the entire agreement between the Government and defendant. No prior agreements, oral representations or statements shall be considered part of this Consent Decree.

#### **RETENTION OF JURISDICTION**

38. This Court shall retain jurisdiction of this action for a period of three years from the date of the certification required by paragraph 31 of this Consent Decree, to enforce or modify the provisions of this Consent Decree, to resolve any dispute that arises under this Consent Decree, and to entertain any application and issue any orders (including, without limitation, orders directing the modification of policies, practices, and procedures, and orders requiring the removal of barriers to access) as may be necessary or appropriate for the effectuation of its terms. The parties shall discuss and attempt to negotiate a resolution of any dispute relating to the interpretation of this Consent Decree before bringing the matter to the Court's attention for resolution.

#### **EXECUTION OF CONSENT DECREE**

39. This Consent Decree may be executed in counterparts, each of which shall be an original and shall constitute one and the same instrument.

**COSTS AND ATTORNEY'S FEES**

40. Each party shall bear its own costs and attorney's fees in this action.

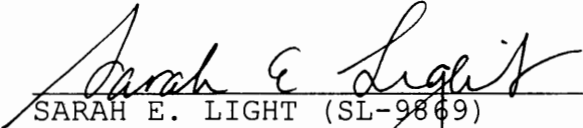
THE PARTIES HEREBY CONSENT to entry of the foregoing Consent Decree:

**REMAINDER OF PAGE INTENTIONALLY LEFT BLANK**

FOR THE UNITED STATES:

DAVID N. KELLEY  
United States Attorney for the  
Southern District of New York  
Attorney for the  
United States of America

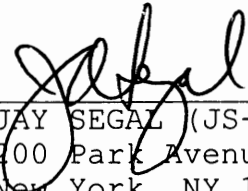
By:

  
SARAH E. LIGHT (SL-9869)  
Assistant United States Attorney  
86 Chambers Street, 3rd Floor  
New York, New York 10007  
Tel. No.: (212) 637-2774

FOR DEFENDANT  
NEW PUCK, LP:

GREENBERG TRAURIG, P.A.  
Attorneys for Defendant  
New Puck, LP

By:

  
JAY SEGAL (JS-5354)  
200 Park Avenue, 15th Floor  
New York, NY 10166  
Tel. (212) 801-9200  
Fax (212) 801-6400

JUDGMENT IS HEREBY ENTERED in accordance with the  
foregoing Consent Decree.

Dated: New York, New York  
7/14, 2004

  
UNITED STATES DISTRICT JUDGE

THIS DOCUMENT WAS ENTERED  
ON THE DOCKET ON 7/15/04